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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-419

VERMONT YANKEE NUCLEAR POWER CORPORATION,

Petitioner

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.,

Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITIONER'S RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO MAKE POST-ARGUMENT FILING

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Respondents have moved for leave to make post-argument filing of a document entitled "Suggestion of Mootness and Motion to Dismiss Writ of Certiorari as Improvidently Granted." Petitioner Vermont Yankee opposes the Motion for Leave because it fails to comply with this Court's Rules and adds nothing new.

Respondents have already made one supplemental filing directed to an alleged mootness problem. *See* Supplemental Statement of Facts of Respondents (filed November 26, 1977). The alleged mootness problem was then discussed by counsel for both petitioner and respondents during oral

argument. Respondents nevertheless seek this Court's indulgence to make a second supplemental filing directed to the same matter. Respondents' present Motion for Leave, however, like the Supplemental Statement which preceded it by only a few days, fails to comply with the Rules of this Court. Supreme Court Rule 41(5) lists the matters which may be presented in a supplemental brief. Rule 41(6) provides that post-argument filings be made only "upon special leave." The Motion for Leave does not even purport to come within any of the categories listed in Rule 41(5). There is no request for "special leave" pursuant to Rule 41(6). There is not even a suggestion of any basis on which this Court should permit such an extraordinary post-argument filing. Respondents' Suggestion of Mootness itself provides nothing new.* On the contrary, respondents acknowledge that all the facts they deem pertinent have long been known, *see* Suggestion of Mootness 1 n.1, and the theories they present were fully canvassed in the course of oral argument.

*Only the Motion for Leave is presently before the Court. It would therefore be inappropriate now to respond in detail to the numerous points requiring correction in respondents' recent and proposed filings except to note the following:

Obviously this Court's decision will affect Vermont Yankee's license. Respondents' own Suggestion of Mootness states that the first issue "adjudged" by the Court of Appeals was "(1) whether a nuclear power station (Vermont Yankee) could be licensed by the Commission without any consideration of the adverse effects on the environment of the wastes generated by the plant." Suggestion of Mootness 2. However, on page 5 of the same document respondents maintain that "When the Commission replaces the interim S-3 Table with a final S-3 Table, the final rule will be applicable to Vermont Yankee and, *upon the request of an interested party, the Commission will once again reconsider the Vermont Yankee operating license.*" Suggestion of Mootness 5 (emphasis added). Thus, absent reversal of the Court of Appeals' decision, upon expiration of the interim rule Vermont Yankee's license will be reconsidered (*i.e.*, placed in jeopardy) at the request of any "interested party," because of the Court of Appeals' command, issued in the very decision now before this Court, to ventilate more thoroughly the environmental effects of the fuel cycle facilities.

CONCLUSION

The proposed filing is merely repetitive and the Motion for Leave should be denied.

Respectfully submitted,

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The suggestion that *Vermont Yankee* has made its case moot by a failure to appeal two NRC decisions is frivolous. Under 28 U.S.C. § 2344 judicial review may be had only of "final" NRC orders by a party "aggrieved" thereby. CLI-77-10 was an interlocutory decision; ALAB-421 was a decision *favoring* Vermont Yankee and Vermont Yankee was obviously not aggrieved by it. In fact, respondents themselves have appealed from the Commission's decision promulgating the interim rule. *Natural Resources Defense Council* v. *NRC*, No. 77-1448 (D.C. Cir., filed May 13, 1977). And, contrary to the statement made in the Supplemental Statement of Facts of Respondents that "no Petition for Review has been filed," one of the respondents, in fact, has appealed from the Appeal Board Decision, ALAB-421. *New England Coalition on Nuclear Pollution* v. *NRC*, No. 77-1342 (1st Cir., filed July 28, 1977). In its petition in the First Circuit, New England Coalition on Nuclear Pollution (NECNP) purported to appeal only from that portion of the ALAB-421 decision which dealt with the Seabrook Station in New Hampshire. However, because of uncertainty whether the issue on appeal is so limited, Vermont Yankee moved to intervene in the First Circuit proceedings on August 2, 1977. Its motion to intervene was not opposed by NECNP and was granted by the First Circuit on August 12, 1977.